

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on March 15, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)

Members Excused: Sen. Emily Stonington (D)

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: House Bill 377, 3/2/2001
Executive Action: House Bill 377 Pass 9-0; Local Options Tax Report

HEARING ON SENATE BILL 377

Sponsor: REPRESENTATIVE ROGER SOMERVILLE, HD 78, Kalispell

Proponents: Sue Talbot, Chair, Governor's Task Force on Endowed Philanthropy; Sidney Armstrong, Montana Community Foundation; Page Dringman, Governor's Task Force on Endowed Philanthropy; Ralph Yaeger, Montana Community Foundation; Dick Crofts, Commissioner of Higher Education; Faye Kommers, MSU Foundation; Gerry Kuhl, Catholic Diocese of Helena; John Cadby, Montana

Banker's Association; Joe Mazurek, DAD Trust Company, Great Falls; Joan Bishop, League of Women Voters of Montana; Jani McCall, Deaconess Billings Clinic; Jon Metropolous, Society of CPA's; Aidan Myhre, Montana Chamber of Commerce and Governor's Task Force; Carl Schweitzer, Bozeman and Kalispell Chamber of Commerce; Mark Taylor, Montana Hospital Association; Aimee Gromosk, Association of Highway Patrol; Sharon Hoff-Broadway, Catholic Conference; Bob Vogel, Montana School Board Association; Kurt Alme, Department of Revenue, SENATOR ALVIN ELLIS; Dustin Stewert, Associated Students; Clark Pyfer, CPA member of Governor's Task Force

Opponents: Ken Nordtvedt

Opening Statement by Sponsor: REPRESENTATIVE SOMERVILLE presented the bill. He handed in written testimony which cited reasons for renewing the Montana Endowment Tax Credit. **EXHIBIT(tas59a01)**
{Tape : 1; Side : A; Approx. Time Counter : 0 - 8.7}

Proponents' Testimony: Sue Talbot, Chair, Governor's Task Force on Endowed Philanthropy described the successful philanthropy programs in Montana. **{Tape : 1; Side : A; Approx. Time Counter : 8.7 - 12.2}**

Sidney Armstrong, Executive Director of the Montana Community Foundation, presented written testimony. **EXHIBIT(tas59a02)**

Page Dringman, from Big Timber and member of the Governor's Task Force on Endowed Philanthropy, described her law firm and their estate planning practice. She mentioned small communities that benefitted through planned gift contributions, such as high schools or volunteer fire departments for example.
EXHIBIT(tas59a03) {Tape : 1; Side : A; Approx. Time Counter : 12.2 - 20}

Dick Crofts, Commissioner of Higher Education, spoke about the features of higher education in recent years, which has seen the dramatic increase in private and corporate support for colleges and universities. This has been beneficial as public dollars for higher education has been diminishing. These additional resources provide for quality for the benefit of students, staff and faculty. He urged the committee continue the credit as it has been beneficial for fund raising efforts. **{Tape : 1; Side : A; Approx. Time Counter : 20 - 21}**

Faye Kommers, Director of Foundation Relations at Montana State University in Bozeman, spoke in support of the bill. Their foundation has encouraged giving especially in the area of

scholarships and student aid. She described how the tax credit had helped grow student aid at MSU. **{Tape : 1; Side : A; Approx. Time Counter : 21 - 24.3}**

Gerry Kuhl, Executive Director for Western Montana Catholic Foundation, testified in favor of the bill. He described the significant resources provided by charitable endowments.

EXHIBIT (tas59a04)

John Cadby, representing the Montana Bankers Association, testified in support of the bill. The association created a foundation three years ago. He listed contributing banks who contributed \$5,000 with a guarantee of \$500 scholarship to a high school senior in their communities into perpetuity.

EXHIBIT (tas59a05) {Tape : 1; Side : A; Approx. Time Counter : 25.7 - 27}

Joe Mazurek, representing DAD Trust Company in Great Falls, testified in support of the bill. Prior to 1997, they had ten charitable remainder trusts in their institution. Now they have nearly 50 and 20 of those were created in the last month of 2000. This demonstrates the level of interest in charitable giving. In addition to building endowments, this creates income from assets that are not in production now. He cited an example, where the average size was \$400 thousand dollars with projected income of 7% which would create \$28 thousand dollars of taxable income in the state of Montana. This in effect creates additional taxable income which offsets the effect of any credit. That taxable income goes on ten to twenty years. When viewing estate plans, you can either do nothing and give most of it to the Internal Revenue Service, leave it to heirs or give it to a charity. You have to pick two of those choices and most people do not want to give it to the IRS. To give to charity would insure that it stays in this state. He pointed out the history of the state and the amount of money that has left this state to endow charities in New York and the East Coast. This is a very good incentive to keep charitable money in Montana and perhaps to bring money in as well. **{Tape : 1; Side : A; Approx. Time Counter : 27 - 30}**

SENATOR JOHN BOHLINGER, described a charitable remainder trust he and his wife had formed for rental units and the various beneficiaries that they will be able to fund with the assets of the trust. **{Tape : 1; Side : B; Approx. Time Counter : 0.0 - 2.5}**

Joan Bishop, representing the Public Library in Helena and the League of Women Voters, presented written testimony in support of the bill. **EXHIBIT (tas59a06)**

Jani McCall, representing Deaconess Billings Clinic, testified in support of the bill. She described the need for an endowment for mental health services. She also spoke for the Yellowstone Coalition, made up of civic leadership including the City of Billings, Yellowstone County, Montana State University Billings, School District 2, the Chamber of Commerce for Yellowstone County, Big Sky Economic Development Group, YMCA and the Association for Homes and Services for Children.

Jon Metropolous, representing the Montana Society of CPA's, testified for the bill. **{Tape : 1; Side : B; Approx. Time Counter : 4.9 - 5.2}**

Aidan Myhre, representing the Montana Chamber of Commerce and Governor's Task Force, supported the bill. Passing this bill would reduce the funding burden to government.

Carl Schweitzer, representing the Bozeman and Kalispell Chambers, asked for full support for the bill.

Mark Taylor spoke on behalf of the Montana Hospital Association. Planned giving is a vital and important aspect to the financial picture for Montana hospitals.

Aimee Gromosk, testified on behalf of the Montana Highway Patrolmen. She discussed the Hope Program which helped terminally ill children have their wishes granted. This would include going to Disney Land or having a computer or even restoring an old car. Planned giving is one of the ways that has paid into the endowment to grant more than one hundred wishes. **{Tape : 1; Side : B; Approx. Time Counter : 5.2 - 7.7}**

Sharon Hoff-Broadway, spoke on behalf of the Montana Catholic Conference for the bill. Charities need a reliable source of income. She encouraged the committee to extend the sunset.

Bob Vogel, Montana School Board Association representing 1,500 school trustees across the state, strongly supported the bill.

Kurt Alme, Director of the Department of Revenue, distributed an amendment. **EXHIBIT(tas59a07)** He felt the program had been too successful as the fiscal note had gotten too large. He noted the purpose of the bill was not to allow outright cash gifts to charitable endowments. Charities could go bankrupt in the short term while endowments would grow for the long term. He described the intent of the planned gift which was not meant to be an outright gift. **{Tape : 1; Side : B; Approx. Time Counter : 9.2 - 18.5}**

SENATOR ALVIN ELLIS stood in support of the bill.

Dustin Stewert, representing the Associated Students, supported the bill.

Clark Pyfer, representing the Society of CPA's and member of the Governor's Task Force, stood in support of the bill.

Opponents' Testimony: Ken Nordtvedt, submitted written testimony against the bill, as he could not attend. **EXHIBIT (tas59a08)**
{Tape : 1; Side : B; Approx. Time Counter : 18.5 - 23}

Questions from Committee Members and Responses: SENATOR ELLIS asked for clarification about the benefactors receiving the 8% each year. **Page Dringman** responded that under the law they get \$10 thousand dollars for a Montana income tax credit and they also qualify for a federal deduction for making that gift into a charitable remainder trust. **SENATOR ELLIS** asked if the value of the gift depreciated due to life expectancy tables and draw down of the corpus of the trust over the period of time. The value of the gift according to the example, depending on their age, might be \$50-100 thousand dollars. **Ms. Dringman** agreed that they may put an asset worth one million dollars into the trust but based on their life expectancy and how much of it depreciated, even under the federal tax deduction it would be far less than the value of the asset. **SENATOR ELLIS** asked whether the income would be considered capital gain. **Ms. Dringman** replied if they had not set it up in a trust and sold the property outright it would be subject to capital gains tax. You would take the value minus the basis which would be taxed at the capital gains rate. **SENATOR ELLIS** said it was his understanding if the trust sold the land to get the funds, it would be capital income but the trust would not owe taxes. When the recipient draws it out then they have to take it as capital gains income. **Mr. Alme** said that was correct. The charitable remainder trust is not a tax paying entity. When it sells the land there are no consequences. When the new trust payment comes out, it is ordinary income in that trust first, then it will come out as capital gains second, tax exempt income third and then it will come out as returning capital. It is "worst first" as the way it comes out to the tax payer. The effective tax rate on capital gains at the federal level it is 18% for property held more than five years as opposed to a maximum individual rate of 39.6%. He noted at the state level there was a surtax on capital gains. **{Tape : 1; Side : B; Approx. Time Counter : 23 - 28.4}**

SENATOR ELLINGSON said he was interested in hearing about the incentive of the current program for charitable remainder trusts and whether it was an effective incentive. The individual that

established a charitable remainder trust as a tangible value, such as a \$250 thousand dollar trust, could that individual then deduct from their taxes that \$250 thousand dollar contribution if they chose to use a deduction as opposed to a credit? **Mr. Alme** replied they could choose to take a state deduction instead of a credit. **SENATOR ELLINGSON** noted that if they took a state deduction, the maximum credit they could get in the year they established the charitable remainder trust would be \$10 thousand dollars. He asked if there was a diminishing likelihood that large charitable remainder trusts would opt to take this kind of a credit. The larger the charitable remainder trust, because of the value of it, the more sense it makes to take a deduction than to simply take a credit. **Mr. Alme** replied that you would be allowed to do both. If you made a contribution to a charitable remainder trust that yields \$100 thousand dollar charitable deduction at the federal level, you take the first \$20 thousand of that and that would turn into a \$10 thousand dollar credit. You take the remaining \$80 thousand dollar deduction and take it as a state deduction on top of that. **SENATOR ELLINGSON** referred to page 2, lines 26-28, that talked about the credit. **Mr. Alme** replied the key word was "full amount". He said whatever part you did not claim as a deduction, you would be allowed to take 50% of that as a credit up to \$10 thousand dollars. **SENATOR ELLINGSON** questioned the contributions by corporations. He asked if the figure was reduced to 20% would that be much incentive to claim the credit as opposed to simply claiming the deduction. **Mr. Alme** replied it would still be about three times the value of the deduction. {Tape : 1; Side : B; Approx. Time Counter : 28.4 - 30.6}

Closing by Sponsor: **REPRESENTATIVE SOMERVILLE** closed. He said there was a lot of support for the bill. The bill is extended for six years so that every contribution that takes place is still at the old rate. After December 31, 2001, the new rates will apply. The program has grown from 1997-98 tax year to include \$1.3 million dollars in tax credits that were claimed. In the last actual recorded area, which was 1999-2000 we have had \$5.6 million dollars in credits claimed. This year it is estimated to have \$9 million dollars from tax credits claimed by this program. It is very successful and it is helping a lot of charities. **SENATOR GROSFIELD** will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 377

SENATOR ELLIS MOVED THE BILL AS AMENDED (#37702) AND HE MOVED THE CONCEPTUAL AMENDMENT. The question was called. The motion **PASSED** unanimously. **SENATOR ELLIS** said this was a very good

piece of legislation. He commented that the opponent, **Ken Nordtvedt** did not understand the bill. The amount of the gift is not just the value of the gift of the trust. Most of the money that the beneficiaries receive as a result of the gift, the 8% that was alluded to that the benefactor takes for the remainder of their life, is quite often taxed at the capital gains rate because the federal rate is at 20% now and going to 18% and the deductibility on that gain is less on a federal basis until the effective tax rate for Montana is higher. Currently it is around 8% where other income is only 6.6% and it will go incrementally higher when the federal rate drops. Montana in the long run wins on tax revenue but they have to give it up in the short term.

{Tape : 2; Side : A; Approx. Time Counter : 6.7 - 9.5}

SENATOR COLE said he supported the bill and felt it was beneficial to the state. He had been concerned about the 50% but the change to 20% was helpful.

The question was called. The motion **PASSED** 8-0 with **SENATOR GLASER** being absent.

ADJOURNMENT

Adjournment: 9:15 A.M.

SEN. BOB DEPRATU, Chairman

DEB THOMPSON, Secretary

BD/DT

EXHIBIT (tas59aad)